

AMENDED IN SENATE AUGUST 23, 2006

AMENDED IN SENATE AUGUST 10, 2006

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2941

**Introduced by Assembly Members Koretz, Dymally, and Jerome
Horton**

**(Coauthors: Assembly Members Bass, Coto, Jones, Keene, Laird,
Leno, Leslie, Levine, Mullin, Pavley, Saldana, and Torrico)**

(Coauthors: Senators Migden, Romero, and Speier)

February 24, 2006

An act to add Sections 7513.6 and 16642 to the Government Code,
relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2941, as amended, Koretz. Public retirement systems:
investments: Sudan.

The California Constitution provides that the Legislature may by statute prohibit retirement board investments where it is in the public interest to do so and providing that the prohibition satisfies specified fiduciary standards.

This bill would prohibit the Public Employees' Retirement System and the California State Teachers' Retirement System from investing

public employee retirement funds in a company with active business operations in Sudan, as specified. The bill would require the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board of the State Teachers' Retirement System to sell or transfer any investments in a company with active business operations in Sudan.

This bill would require those boards to report to the Legislature any investments in a company with business operations in Sudan and the sale or transfer of those investments, subject to the fiduciary duty of those boards, by January 1, 2008, and every year thereafter.

This bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees of and investment managers under contract with those retirement systems.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Congress of the United States has declared that
- 4 genocide is occurring in the Darfur region of Sudan.
- 5 (b) The National Black Caucus of State Legislators Resolution
- 6 05-144 declares that the atrocities unfolding in Darfur are
- 7 genocide under Article 1, Article 2, and Article 3 of the United
- 8 Nations Convention of 1948.
- 9 (c) The United Nations International Commission of Inquiry
- 10 on Darfur found that government and militia forces of Sudan
- 11 have conducted indiscriminate attacks, including, but not limited
- 12 to, the killing of civilians, torture, forced disappearances, the
- 13 destruction of villages, rape and other forms of sexual violence,
- 14 pillaging, and forced displacement throughout Darfur.
- 15 (d) Sudanese government forces and government-supported
- 16 militia forces have implemented a coordinated policy of ethnic
- 17 cleansing.
- 18 (e) More than two and one-half million people are affected by
- 19 the crisis in Sudan. According to the Intermediate Technology
- 20 Development Group, two and one-half million people are
- 21 displaced inside Sudan, 200,000 people *are* living as refugees,

1 and more than 60 percent of the villages in northern Darfur have
2 been destroyed or abandoned.

3 (f) According to the Report on Human Rights Practices in
4 Sudan by the United States Department of State, Sudanese
5 government forces have pursued a scorched earth policy aimed at
6 removing populations from around a newly constructed oil
7 pipeline and other oil production facilities.

8 (g) The United States Department of State Report on Human
9 Rights Practices in Sudan found that 14,000 Dinka women and
10 children have been abducted in Sudan.

11 (h) Christian Solidarity International reports that the
12 government of Sudan is responsible for the revival of the evil
13 institution of slavery.

14 (i) The Methodist Church of Southern Africa reports mass
15 rapes of girls and women, the displacement of millions of people,
16 and genocide and ethnic cleansing in Darfur.

17 (j) The Committee on Conscience of the United States
18 Holocaust Memorial Museum has declared a genocide
19 emergency in Sudan.

20 (k) Investing public retirement funds in business firms and
21 institutions with ties to the repressive regime in Sudan is
22 inconsistent with the moral and political values of the people of
23 California.

24 (l) The Legislature acknowledges that divestment is a course
25 of last resort that should be used sparingly and under
26 extraordinary circumstances. This act is based on unique
27 circumstances, specifically, the reprehensible and abhorrent
28 genocide occurring in Sudan. This act is not intended to set
29 precedent with regard to divestment policies and practices by
30 public retirement and pension funds in California.

31 SEC. 2. Section 7513.6 is added to the Government Code, to
32 read:

33 7513.6. (a) As used in this section, the following definitions
34 shall apply:

35 (1) "Active business operations" means a company engaged in
36 business operations that provide revenue to the government of
37 Sudan or a company engaged in oil-related activities.

38 (2) "Board" means the Board of Administration of the Public
39 Employees' Retirement System or the Teachers' Retirement
40 Board of the State Teachers' Retirement System, as applicable.

1 (3) “Business operations” means maintaining, selling, or
2 leasing equipment, facilities, personnel, or any other apparatus of
3 business or commerce in Sudan, including the ownership or
4 possession of real or personal property located in Sudan.

5 (4) “Company” means a sole proprietorship, organization,
6 association, corporation, partnership, venture, or other entity, its
7 subsidiary or affiliate that exists for profitmaking purposes or to
8 otherwise secure economic advantage. “Company” also means a
9 company owned or controlled, either directly or indirectly, by the
10 government of Sudan, that is established or organized under the
11 laws of or has its principal place of business in the Republic of
12 the Sudan.

13 (5) “Government of Sudan” means the government of Sudan
14 or its instrumentalities.

15 (6) “Invest” or “investment” means the purchase, ownership,
16 or control of stock of a company, association, or corporation, the
17 capital stock of a mutual water company or corporation, bonds
18 issued by the government or a political subdivision of Sudan,
19 corporate bonds or other debt instruments issued by a company,
20 or the commitment of funds or other assets to a company,
21 including a loan or extension of credit to that company.

22 (7) “Military equipment” means weapons, arms, or military
23 defense supplies.

24 (8) “Oil-related activities” means, but is not limited to, the
25 export of oil, extracting or producing oil, exploration for oil, or
26 the construction or maintenance of a pipeline, refinery, or other
27 oil field infrastructure.

28 (9) “Public employee retirement funds” means the Public
29 Employees’ Retirement Fund described in Section 20062 of this
30 code, and the Teachers’ Retirement Fund described in Section
31 22167 of the Education Code.

32 (10) “Research firm” means a reputable, neutral third-party
33 research firm.

34 (11) “Substantial action” means a boycott of the government
35 of Sudan, curtailing business in Sudan until that time described in
36 subdivision (m), selling company assets, equipment, or real and
37 personal property located in Sudan, or undertaking significant
38 humanitarian efforts in the eastern, southern, or western regions
39 of Sudan.

1 (12) “Sudan” means the Republic of the Sudan, a territory
2 under the administration or control of the Sudan, including but
3 not limited to, the Darfur region, or an individual, company, or
4 public agency located in Khartoum, northern Sudan, or the Nile
5 River Valley that supports the Republic of the Sudan.

6 (b) The board shall not invest public employee retirement
7 funds in a company with business operations in Sudan that meets
8 all of the following criteria:

9 (1) The company is engaged in active business operations in
10 Sudan. If that company is not engaged in oil-related activities,
11 that company also lacks significant business operations in the
12 eastern, southern, and western regions of Sudan.

13 (2) Either of the following apply:

14 (A) The company is engaged in oil-related activities or energy
15 or power-related operations, or contracts with another company
16 with business operations in the oil, energy, and power sectors of
17 Sudan, and the company failed to take substantial action related
18 to the government of Sudan because of the Darfur genocide.

19 (B) The company has demonstrated complicity in the Darfur
20 genocide.

21 (c) Notwithstanding subdivision (b), the board shall not invest
22 public employee retirement funds in a company that supplies
23 military equipment within the borders of Sudan. If a company
24 provides equipment within the borders of Sudan that may be
25 readily used for military purposes, including, but not limited to,
26 radar systems and military-grade transport vehicles, there shall
27 also be a strong presumption against investing in that company
28 unless that company implements safeguards to prevent the use of
29 that equipment for military purposes.

30 (d) (1) The board shall, without regard to the provisions
31 regarding competitive bidding, contract with a research firm or
32 firms to determine those companies that have business operations
33 in Sudan. Those research firms shall, in the aggregate, obtain
34 data on a majority of companies with business operations in
35 Sudan. On or before March 30, 2007, those research firms shall
36 report any findings to the board and those research firms shall
37 submit further findings to the board if there is a change of
38 circumstances in Sudan.

(2) In addition to the reports described in paragraph (1), the board shall take all of the following actions no later than March 30, 2007:

(A) Review publicly available information regarding companies with business operations in Sudan.

(B) Contact other institutional investors that invest in companies with business operations in Sudan.

(C) Send written notice to a company with business operations in Sudan that the company may be subject to this section.

(e) (1) The board shall determine, by the next applicable board meeting and based on the information and reports described in subdivision (d), if a company meets the criteria described in subdivision (b) or (c). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b) or (c), that planned or existing investment shall be subject to subdivisions (g) and (h).

(2) Investments of the board in a company that does not meet the criteria described in subdivision (b) or (c) or does not have active business operations in Sudan are not subject to subdivision (h), provided that the company does not subsequently meet the criteria described in subdivision (b) or (c) or engage in active business operations. The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) or (c) or does not engage in active business operations in the report to the Legislature described in subdivision (i).

(f) (1) Notwithstanding subdivision (e), if the board's investment in a company described in subdivision (b) or (c) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, 2007, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b) or (c), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Sudan shall be deemed to satisfy subdivision (h).

(2) If the board's investment in a company described in subdivision (b) or (c) is limited to an alternative fund or account, the alternative fund or account manager creates an actively

1 managed commingled fund that excludes companies described in
2 subdivision (b) or (c), and the new fund or account is deemed to
3 be financially equivalent to the existing fund or account, the
4 transfer of board investments from the existing fund or account
5 to the new fund or account shall be deemed to satisfy subdivision
6 (h). If the board determines that the new fund or account is not
7 financially equivalent to the existing fund, the board shall include
8 the reasons for that determination in the report described in
9 subdivision (i).

10 (3) The board shall make a good faith effort to identify any
11 private equity investments that involve companies described in
12 subdivision (b) or (c) or are linked to the government of Sudan. If
13 the board determines that a private equity investment clearly
14 involves a company described in subdivision (b) or (c) or is
15 linked to the government of Sudan, the board shall consider, at its
16 discretion, if those private equity investments shall be subject to
17 subdivision (h). If the board determines that a private equity
18 investment clearly involves a company described in subdivision
19 (b) or (c) or is linked to the government of Sudan and the board
20 does not take action as described in subdivision (h), the board
21 shall include the reasons for its decision in the report described in
22 subdivision (i).

23 (g) Except as described in subdivision (f) or paragraph (2) of
24 subdivision (e), the board, in the board's capacity of shareholder
25 or investor, shall notify any company described in paragraph (1)
26 of subdivision (e) that the company is subject to subdivision (h)
27 and permit that company to respond to the information and
28 reports described in subdivision (d). The board shall request that
29 the company take substantial action no later than 90 days from
30 the date the board notified the company under this subdivision. If
31 the board determines that a company has taken substantial action
32 or has made sufficient progress towards substantial action before
33 the expiration of that 90-day period, that company shall not be
34 subject to subdivision (h). The board shall, at intervals not to
35 exceed 90 days, continue to monitor and review the progress of
36 the company until that company has taken substantial action in
37 Sudan. A company that fails to complete substantial action or
38 continue to make sufficient progress towards substantial action
39 by the next time interval shall be subject to subdivision (h).

1 (h) If a company described in paragraph (1) of subdivision (e)
2 fails to complete substantial action by the time described in
3 subdivision (g), the board shall take the following actions:

4 (1) The board shall not make additional or new investments or
5 renew existing investments in that company.

6 (2) The board shall liquidate the investments of the board in
7 that company no later than 18 months after this subdivision
8 applies to that company. The board shall liquidate those
9 investments in a manner to address the need for companies to
10 take substantial action in Sudan and consistent with the board's
11 fiduciary responsibilities as described in Section 17 of Article
12 XVI of the California Constitution.

13 (i) On or before January 1, 2008, and every year thereafter, the
14 board shall file a report with the Legislature. The report shall
15 describe the following:

16 (1) A list of investments the board has in companies with
17 business operations in Sudan, including, but not limited to, the
18 issuer, by name, of the stock, bonds, securities, and other
19 evidence of indebtedness.

20 (2) A detailed summary of the business operations a company
21 described in paragraph (1) has in Sudan and whether that
22 company satisfies all of the criteria in subdivision (b) or (c).

23 (3) Whether the board has reduced its investments in a
24 company that satisfies the criteria in subdivision (b) or (c).

25 (4) If the board has not completely reduced its investments in
26 a company that satisfies the criteria in subdivision (b) or (c),
27 when the board anticipates that the board will reduce all
28 investments in that company or the reasons why a sale or transfer
29 of investments is inconsistent with the fiduciary responsibilities
30 of the board as described in Section 17 of Article XVI of the
31 California Constitution.

32 (5) Any information described in subdivision (e).

33 (6) A detailed summary of investments that were transferred to
34 funds or accounts devoid of companies with business operations
35 in Sudan as described in subdivision (f).

36 (j) If the board voluntarily sells or transfers all of its
37 investments in a company with business operations in Sudan, this
38 section shall not apply except that the board shall file a report
39 with the Legislature related to that company as described in
40 subdivision (i).

1 (k) Nothing in this section shall require the board to take
2 action as described in this section unless the board determines, in
3 good faith, that the action described in this section is consistent
4 with the fiduciary responsibilities of the board as described in
5 Section 17 of Article XVI of the California Constitution.

6 (l) Subdivision (h) shall not apply to any of the following:

7 (1) Investments in a company that is ~~clearly~~ *primarily* engaged
8 in supplying goods ~~and~~ or services intended to relieve human
9 suffering in ~~Sudan~~ or Sudan.

10 (2) *Investments* in a company that promotes health, education,
11 journalistic, or religious activities in or welfare in the western,
12 eastern, or southern regions of Sudan.

13 ~~(2)~~

14 (3) Investments in a United States company that is authorized
15 by the federal government to have business operations in Sudan.

16 (m) This section shall remain in effect only until one of the
17 following occurs, and as of the date of that action, is repealed:

18 (1) The government of Sudan halts the genocide in Darfur for
19 12 months as determined by both the Department of State and the
20 Congress of the United States.

21 (2) The United States revokes its current sanctions against
22 Sudan.

23 SEC. 3. Section 16642 is added to the Government Code, to
24 read:

25 16642. Present, future, and former board members of the
26 Public Employees' Retirement System or the State Teachers'
27 Retirement System, jointly and individually, state officers and
28 employees, research firms described in subdivision (d) of Section
29 7513.6, and investment managers under contract with the Public
30 Employees' Retirement System or the State Teachers'
31 Retirement System shall be indemnified from the General Fund
32 and held harmless by the State of California from all claims,
33 demands, suits, actions, damages, judgments, costs, charges and
34 expenses, including court costs and attorney's fees, and against
35 all liability, losses, and damages of any nature whatsoever that
36 these present, future, or former board members, officers,
37 employees, research firms, or contract investment managers shall

- 1 or may at any time sustain by reason of any decision to restrict,
- 2 reduce, or eliminate investments pursuant to Section 7513.6

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